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No. 84-1018

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

UNITED STATES TRUST COMPANY OF NEW YORK,
J. GREGORY VAN SCHAACK and
BRUCE P. DENNEN,
Conditional Cross-Petitioners Under Rule 19.5,

—against—

AUGUSTIN J. SAN FILIPPO, ESQ., and
THE HONORABLE ROBERT M. MORGENTHAU,
District Attorney for the County of New York,
Cross-Respondents.

CONDITIONAL CROSS PETITIONERS' SUPPLEMENTAL BRIEF UNDER RULE 22.6

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31 January 1985

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CONDITIONAL CROSS PETITIONERS' SUPPLEMENTAL BRIEF UNDER RULE 22.6

Pursuant to Rule 22.6 conditional cross-petitioners* submit this brief to bring to the Court's attention a new case not available at the time of their last filing.

At page 12 of the conditional cross-petition it was noted that the New York Court of Appeals had before it the same statute of limitations issue which cross-petitioners wished to present on their fourth question presented. That ruling has issued, resolving the conflict between the one year period of CPLR § 215(3) and the three year period of CPLR § 214, for § 1983 actions.

In *Fields v. Board of Higher Education*, 63 N.Y. 2d 817 (1984), and *Pitt v. City of New York*, 63 N.Y. 2d 815 (1984),

*United States Trust Company of New York has affixed a statement pursuant to Rule 28.1 to its brief in opposition to certiorari, # 84-763, and to its conditional cross petition, # 84-1018.

the Court of Appeals has affirmed on the opinion below *Fields v. Board of Higher Education*, 94 A.D. 2d 262, 463 N.Y.S. 2d 785 (1st Dep't 1983). No petition in this Court for certiorari to the New York Court of Appeals has yet been filed. Thus the New York State Courts have explicitly deferred to *Pauk v. Board of Trustees*, 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982), apparently as a matter of comity to the Second Circuit in applying federal law, in holding that the three year period of CPLR § 214 governs all § 1983 actions.

The *Fields* opinion in the Appellate Division is unclear whether, apart from the federal law issues on which it defers to the Second Circuit, the same result would have been independently reached as a matter of state law. Thus conditional cross-petitioner's refutation of *Pauk's* federal law holding rejecting any state statute shorter than two years, 654 F.2d at 862, remains vital. On this latter issue *Wilson v. Garcia*, # 83-2146, and *Knoll v. Springfield Township*, # 82-1889, both argued in this Court on 14 January 1985, should provide clarification. If this Court decides *Knoll* or *Wilson* in favor of the petitioners, it should then vacate and remand for reconsideration of the statute of limitations defense, if San Filippo's petition were granted at all.

Respectfully submitted,
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